

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STEVEN HOTZE, M.D. WENDELL
CHAMPION, HON. STEVE TOTH, AND
SHARON HEMPHILL,

Plaintiffs,

v.

CHRIS HOLLINS, in his official capacity as
Harris County Clerk,

Defendant,

and

MJ FOR TEXAS; DSCC; DCCC; MARY
CURRIE; CARLTON CURRIE JR.;
JEKAYA SIMMONS, and DANIEL
COLEMAN,

Proposed Intervenor-Defendants,

and

CHRISTINA MASSARA, ALAN MAUK,
JENN RAINEY, BRIAN SINGH, MARY
BACON, KIMBERLY PHIPPS-NICHOL,
NYGUEN GRIGGS, NELSON VANEGAS,
JESSICA GOODSPERO, AMY
ASHMORE, RICHARD FRANKEL,
ELAINE FRANKEL, RYAN FRANKEL,
CELIA VESELKA, SERGIO ALDANA,
RUSSELL "RUSTY" HARDIN, DOUGLAS
MOLL, AND CAREY JORDAN,

Proposed Intervenor-Defendants.

Case No. 4:20-cv-03709

Judge Andrew S. Hanen

**DRIVE-THRU VOTERS’ (1) MOTION FOR LEAVE TO FILE A WRITTEN
OPPOSITION TO PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION AND
(2) REQUEST TO PARTICIPATE IN NOVEMBER 2, 2020 HEARING**

Proposed Intervenor-Defendants Christina Massara; Alan Mauk; Jenn Rainey; Brian Singh; Mary Bacon; Kimberly Phipps-Nichol; Nyguen Griggs; Nelson Vanegas; Jessica Goodsporo; Amy Ashmore; Richard Frankel; Elaine Frankel; Ryan Frankel; Celia Veselka; Sergio Aldana; Russell “Rusty” Hardin; Douglas Moll; and Carey Jordan (“Drive-Thru Voters”), who have concurrently filed a Motion to Intervene under Federal Rule of Civil Procedure 24, hereby request that the Court permit them to file the Brief in Opposition to Plaintiff’s Motion for a Preliminary Injunction attached as Exhibit A. The Drive-Thru Voters further request to be heard at the Monday, November 2, 2020 hearing on the Preliminary Injunction Sought by Plaintiffs.

ARGUMENT

The Drive-Thru Voters are voters who cast ballots in person at valid polling places during the Early Voting time period October 13 through October 30, 2020. Drive-Thru voting is an option for in-person voting at ten polling places throughout Harris County during the three-week early voting period. In-person early voters at these ten locations can choose to walk inside and vote using the e-slate at a voting booth, or they may drive through a tented area and vote while sitting in their car using the e-slate handed to them by a poll worker. Identical ID verification procedures are used whether inside or at the Drive-Thru. Harris County first announced that Drive-Thru voting would be a part of early in-person voting in June 2020. Of the over one million voters who cast their ballots in person during early voting, almost 127,000 of them cast their votes on e-slates from the Drive-Thru polling stations.

Plaintiffs filed their complaint for “emergency injunctive relief” on October 28, 2020, and the Court set a hearing for Monday, November 2, 2020. The Drive-Thru Voters, whose votes the Plaintiffs seek to disqualify, filed their motion to intervene on November 1, 2020.

For the reasons discussed in the Motion to Intervene, the Drive-Thru Voters meet the requirements for intervention as of right under FRCP 24(a)(2), or permissive intervention under FRCP 24(b). Recognizing that their Motion to Intervene has not been granted, the Drive-Thru Voters respectfully seek leave of the Court to file the attached written opposition to Plaintiffs’ Motion for a Preliminary Injunction because the Court will hear both motions concurrently at the hearing set for Monday, November 2, 2020. Should this Court ultimately grant the Drive-Thru Voters’ Motion to Intervene, this Court will then have the benefit of the Drive-Thru Voters’ briefing on Plaintiff’s substantive motion. For the same reason, the Drive-Thru Voters also request that this Court allow them to offer arguments on the merits of Plaintiff’s preliminary injunction at the hearing.

During this election cycle, other courts have granted parties the opportunity to file briefs and participate fully in temporary injunction hearings before their motion to intervene was granted. *See, e.g.*, Order, DSCC v. Simon, 62-cv-20-585 (Gilligan, J.)(Minn. Dist. Ct. April 16, 2020)(“The Proposed Intervenors [RNC and Minnesota Republican Party] shall be allowed to provisionally participate in the briefings and oral arguments of the pending motion for temporary injunction while the Court considers their motion to intervene.”). This approach will allow the Drive-Thru Voters, who are some of the very people whose votes are at issue here, to be heard by the Court before the Plaintiffs argue that the Court take actions that would permanently harm the Drive-Thru Voters. As the Fifth Circuit has held: “The very purpose of intervention is to

allow interested parties to air their views so that a court may consider them before making potentially adverse decisions.” *Brumfield v. Dodd*, 749 F.3rd 339, 345 (5th Cir. 2014).

The Drive-Thru Voters will not be repeating the same arguments made by other parties. The Drive-Thru Voters will limit their arguments to those not made in the briefs already before the Court.

For these reasons, the Drive-Thru Voters respectfully request this Court grant their Motion for Leave to File a Written Opposition to Plaintiff’s Motion for a Preliminary Injunction, which is attached as Exhibit A to this Motion, and grant their Request to Participate in the November 2, 2020 Hearing if this Court has not yet resolved the Drive-Thru Voter’s Motion to Intervene.

CONCLUSION

Drive-Thru Voters respectfully request that the Court grant the Drive-Thru Voters’ (1) motion for leave to file a written opposition to Plaintiff’s Motion for Preliminary Injunction, and (2) request to participate in the November 2, 2020 hearing before the Court. A proposed order is attached for the Court’s consideration.

Dated: November 2, 2020.

Respectfully submitted,

SMYSER KAPLAN & VESELKA, L.L.P.

/s/ Larry R. Veselka

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***ATTORNEYS FOR THE DRIVE-THRU
VOTERS***

CERTIFICATE OF CONFERENCE

I certify that I sent an email to Plaintiffs' counsel on the evening of November 1, 2020 asking him for his position on this Motion. Plaintiffs' counsel has yet to respond.

/s/ David Isaak

David Isaak

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Leave to File a Written Opposition and Request to Participate in the November 2, 2020 Hearing was delivered to all counsel of record on November 2, 2020 via the Court's CM/ECF filing system.

/s/ Larry R. Veselka

Larry R. Veselka

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**ORDER ON DRIVE-THRU VOTERS' MOTION TO FILE WRITTEN OPPOSITION TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND REQUEST TO
PARTICIPATE IN THE NOVEMBER 2, 2020 HEARING**

Having considered the Drive-Thru Voters' Motion to File Written Opposition to Plaintiff's Motion for a Preliminary Injunction and Request to Participate in the November 2, 2020 Hearing (the "Motion") and all relevant law and facts, this Court finds that the Motion should be GRANTED.

Signed on this the _____ day of _____ 2020.

HON. ANDREW S. HANEN
UNITED STATES
DISTRICT JUDGE

EXHIBIT A